

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 23, 2013 at 2:00 p.m.

1. 09-30404-A-13 TODD LATIN MOTION TO
JPJ-3 DISMISS CASE
11-4-13 [65]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The plan has a duration of 60 months. The debtor is now in the 55th month under the plan. Because claims are higher than assumed by the debtor, it will take 81 to consummate the plan. Local Bankruptcy Rule 3007-1(d) requires that a plan be modified or claim(s) be objected to when the plan is no longer feasible in light of the claims filed by or on behalf of creditors. Despite a reasonable opportunity to do so, the debtor has not sought to modify the plan. This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after this motion was filed, the debtor's brother offered to make remaining payments due under the plan and make a lump sum payment in April 2014 sufficient to pay unpaid dividends. On condition that all future monthly payments and the lump sum payment are made timely, the case will remain pending. In the event of any default, the petition will be dismissed on the trustee's further ex parte application. The failure make payments and to timely complete the will cause delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

2. 13-33129-A-13 RAYMUNDO/WILHELMINA MOTION TO
JPJ-1 ARROYO DISMISS CASE
12-2-13 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

First, the debtor has failed to commence making plan payments and has not paid approximately \$647.18 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(4).

Second, this case was filed on October 9. Therefore, a proposed plan should have been filed no later than October 23. See Fed. R. Bankr. P. 3015(b).

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While one was filed on October 23, amended plans were filed on November 13 and December 2. Neither of these amended plans have been served on creditors and the trustee together with a motion to confirm a plan. It was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See Local Bankruptcy Rule 3015-1(d)(1). The failure to serve either amended plan with a motion to confirm a plan will necessarily delay confirmation of a plan and prevent the conduct of a confirmation hearing within the time required by 11 U.S.C. § 1324. This delay, then, is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

3. 13-31151-A-13 DANIEL/LISA STANLEY MOTION TO
JPJ-1 DISMISS CASE
11-19-13 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it because the court sustained an objection to its confirmation. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This suggests that the debtor either does not intend to confirm a plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after the objection was filed, the debtor filed an amended plan and a motion to confirm it. The court will consider it for confirmation at a hearing on January 21, 2013. If a plan is not confirmed on January 21, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a modified plan within a reasonable time will cause delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

4. 09-33264-A-13 GRANT/LEAH SORENSEN MOTION TO
JPJ-1 DISMISS CASE
11-4-13 [47]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The plan has a duration of 60 months. The debtor is now in the 53rd month under the plan. Because claims are higher than assumed by the debtor, it will take 82 to consummate the plan. Local Bankruptcy Rule 3007-1(d) requires that a plan be modified or claim(s) be objected to when the plan is no longer feasible in light of the claims filed by or on behalf of creditors. Despite a reasonable opportunity to do so, the debtor has not sought to modify the plan. This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after this motion was filed, an modified plan and a motion to confirm it were filed, served and set for hearing on December 30. On condition that the modified plan is confirmed, the case will remain pending. In the event it is not confirmed on December 30, the petition will be dismissed on the

trustee's further ex parte application. The failure make payments and to timely complete the will cause delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c) (1).

5. 13-34474-A-13 JOHN/BEATRIZ MARKHAMA MOTION TO
JPJ-1 DISMISS CASE
12-9-13 [57]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to use the court's standard chapter 13 plan as required by Local Bankruptcy Rule 3015-1(a). To the extent that form contains provisions that are inconsistent with the debtor's desired plan, changes may be made to the standard provisions in the "additional provisions" section of the standard plan.

Second, the debtor failed to file Exhibit D to the petition together with a certificate for credit counseling as required by Fed. R. Bankr. P. 1007(b) (3) and 11 U.S.C. § 521(b). The time to file these documents has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This is cause for dismissal.

6. 09-41776-A-13 DENSON/STEPHANIE SALES MOTION TO
JPJ-1 DISMISS CASE
11-4-13 [45]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The plan has a duration of 60 months. The debtor is now in the 50th month under the plan. Because claims are higher than assumed by the debtor, it will take 75 to consummate the plan. Local Bankruptcy Rule 3007-1(d) requires that a plan be modified and/or claim(s) be objected to when the plan is no longer feasible in light of the claims filed by or on behalf of creditors. Despite a reasonable opportunity to do so, the debtor has not sought to modify the plan. This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c) (1) & (c) (5).

However, after this motion was filed, an modified plan and a motion to confirm it were filed, served and set for hearing on January 27, 2014. On condition that the modified plan is confirmed, the case will remain pending. In the event it is not confirmed on January 27, the petition will be dismissed on the trustee's further ex parte application. The failure make payments and to timely complete the will cause delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c) (1).

7. 13-31090-A-13 CATHRYN BURNETT
JPJ-3

MOTION TO
DISMISS CASE
11-25-13 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

First, the debtor has failed to pay to the trustee approximately \$1,644 as required by the last proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Second, the debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it because the court sustained an objection to its confirmation. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This suggests that the debtor either does not intend to confirm a plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).